

## **REMARKS**

In the Office Action, the Examiner rejected claims 56-62. Claims 63 and 64 are presently added, claims 56, 58-60, and 62 are presently amended, and claim 57 is presently canceled. Accordingly, claims 56 and 58-64 are presently pending. No new matter is included by the present amendments or new claims. The Applicant requests reconsideration of claims 56 and 57-62 in view of the following remarks. Additionally, the Applicant requests consideration of new claims 63 and 64 in view of the following remarks.

### **Claim Rejections Under 35 U.S.C. § 112, Second Paragraph**

In the Office Action, the Examiner appears to have rejected claims 58 and 59 under 35 U.S.C. § 112, second paragraph. Regarding claim 58, the Examiner indicated that “the subsequent login attempt” and “the longer time delay” did not have sufficient antecedent basis. Further, the Examiner suggested that claim 58 should have been dependent from claim 57. Regarding claim 59, the Examiner suggested that the term “serializing” is used in the claim to mean “tracking” or “storing.” The Examiner further suggested that the accepted meaning of “serializing” is “transmitting in sequence” or “occurring in a series.”

The Applicant presently amends claim 56 to include relevant features from claim 57. Accordingly, claim 56 now recites “a longer time delay” and “a subsequent login attempt.” (Emphasis added). Claim 58 remains dependent from claim 56. In view of the present amendment, the Applicant believes the Examiner’s concerns have been addressed and the rejection of claim 58 should be withdrawn.

Regarding claim 59, the Applicant asserts that the term “serializing” does not mean “tracking” or “storing” as suggested by the Examiner. An exemplary embodiment of the present invention is directed to preventing unauthorized access to accounts. Some

embodiments of the present invention “serialize login attempts made without a first-class login cookie 300 to control the rate at which such login attempts are processed” to prevent the “launch [of] many attacks against an account in parallel.” Application, paragraph [0030] (emphasis added). In view of this disclosure in the application, the term “serialize” is believed to be adequately defined. Accordingly, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 59.

In view of the arguments set forth above, the Applicant requests that the Examiner withdraw the rejections of claims 58 and 59 and provide an indication of allowance.

**Claim Rejections Under 35 U.S.C. § 112, First Paragraph**

In the Office Action, the Examiner rejected claim 60 under 35 U.S.C. § 112, first paragraph. Specifically, the Examiner stated:

Claim 60 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation “responsive to the limited number being zero, associating a different class of login cookie with a more preferential level of service with the login cookie” is not supported by the specification. It appears that the limitation would upgrade a second-class login cookie to a first-class login cookie, which is the opposite of applicant’s invention as understood by the examiner.

Office Action, page 3.

Regarding the written description requirement, the initial burden of proof regarding the sufficiency of the written description falls on the Examiner. Accordingly, the Examiner must present evidence or reasons why persons skilled in the art would not recognize a description of the claimed subject matter in the applicant’s disclosure. *In re Wertheim*, 541 F.2d 257, 262, 191 U.S.P.Q. 90, 96 (CCPA 1976). The Examiner is also reminded that the

written description requirement does not require the claims to recite the same terminology used in the disclosure. The patentee may be his own lexicographer. *Ellipse Corp. v. Ford Motor Co.*, 171 U.S.P.Q. 513 (7<sup>th</sup> Cir. 1971), *aff'd* 613 F.2d 775 (7<sup>th</sup> Cir. 1979), *cert. denied*, 446 U.S. 939 (1980).

The Applicant traverses the Examiner's rejection of claim 60. The Applicant asserts that, in view of the specification, one of ordinary skill in the art would understand that having no invalid consecutive login attempts since a previous valid login would result in associating a different class of login cookie with a more preferential level of service with the login cookie. Indeed, the Applicant stresses that the subject matter set forth in claim 60 is clearly supported by the specification. For example, the Applicant directs the Examiner to paragraphs 34 and 35 of the application for support. For the convenience of the Examiner, paragraph 35 is set forth below:

But each time a login attempt with a first-class login cookie 300 is successful, the controller 120 sets the invalid-login count to zero. Additionally, each time a login attempt with a second-class login cookie 300 is successful, the controller 120 sets the invalid-login count to zero (and the login cookie class 310 is set to "first-class"). An invalid login count of zero indicates that a user did not make any invalid login attempts with the first-class login cookie 300 since the most recent, successful login attempt.

Application, paragraph [0035].

While the Applicant traverses the Examiner's rejection of claim 60, the Applicant presently amends claim 60 to clarify its meaning. An exemplary embodiment of the present invention is directed to resisting unauthorized attempts to login to an account. *See* Application, paragraph [0006]. To reduce the effectiveness of certain methods of attacking an account (e.g., dictionary attacks), present embodiments require additional time between login attempts for clients with second-class login tokens. *See id.* However, in some

embodiments, if a client successfully logs into an account using a second-class login token, the client is provided with a first class login token. *See id.* Accordingly, amended claim 60 recites, *inter alia*, “responsive to no invalid consecutive login attempts since a previous valid login, associating a different class of login cookie with a more preferential level of service with the login cookie.” The Applicant asserts that this language is clearly supported in the specification.

In view of the disclosure in the application and the present clarifying amendment to claim 60, the Applicant respectfully requests that the Examiner withdraw the rejection of claim 60. Further, the Applicant requests an indication of allowance for claim 60.

#### **Claim Rejections Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 56-59, 61, and 62 under 35 U.S.C. § 102(a) as being anticipated by Bhatti et al. (U.S. Patent No. 6,304,906) (“Bhatti reference”). Additionally, the Examiner rejected claims 56-59, 61, and 62 under 35 U.S.C. § 102(e) as being anticipated by Mosberger et al. (U.S. Patent No. 6,438,597) (“Mosberger reference”). The Applicant respectfully traverses these rejections.

Specifically, with regard to the rejection of claim 57 in view of the Bhatti reference, the Examiner stated:

With regard to claim 57, Bhatti et al disclose the method of claim 56 wherein providing a level of service to login attempts associated with the login cookie based on the login cookie class of the login cookie further comprises:

imposing a longer time delay between an invalid login attempt and a subsequent login attempt for a second-class login cookie than for a first-class login cookie. (column 6, lines 13-39; “Each tier or class may have targets or expectations for

performance” – lower class logins would experience lower class service, i.e. longer time delays)

Office Action, pages 4-5.

With regard to the rejection of claims 56-59, 61, and 62 in view of the Mosberger reference, the Examiner stated:

Claims 56-59, 61, and 62 are rejected under 35 U.S.C. § 102(e) as being anticipated by Mosberger et al. (U.S. Patent No. 6,438,597) for reasons similar to those described above.

Office Action, page 6.

Anticipation under 35 U.S.C. § 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under 35 U.S.C. § 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, the Applicant needs only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

Further, if the Examiner relies on a theory of inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999) (Emphasis Added). The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Id.* In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent

characteristic necessarily flows from the teachings of the applied prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The Examiner, in presenting the inherency argument, bears the evidentiary burden and must adequately satisfy this burden. *See id.*

Turning to the claims, claims 56 and 62 are presently amended to include features relating to features initially recited in dependent claim 57 and, thus, claim 57 has been canceled. Specifically, as amended, claims 56 and 62 each recite, *inter alia*, “requiring a longer time delay for a second-class login cookie than for a first-class login cookie between an invalid login attempt and allowing a subsequent login attempt.” (Emphasis added).

The Bhatti reference fails to teach each and every feature of the present claims. For example, the Bhatti reference merely teaches that “class-based services provide tiered performances to match tiered pricing” and that “[e]ach tier or class may have targets or expectations of performance.” Bhatti et al., col. 6, lines 33-35. The Applicant asserts that this does not inherently teach that a longer delay is required for a second-class login cookie than for a first-class login cookie.

Embodiments of the present invention are directed to reducing the effectiveness of certain methods of attacking an account (e.g., dictionary attacks). Accordingly, present embodiments are directed to “requiring” additional time between login attempts for clients with second-class login tokens. *See* Application, paragraph [0006]. This facilitates resistance or prevention of certain account attacks, such as dictionary attacks. The Applicant can find no teaching of this in the Bhatti reference. Further, the Applicant can find no support for what appears to be an inherency argument by the Examiner. Indeed, the portion of the Bhatti reference cited by the Examiner is reproduced below to emphasize this deficiency.

Each of the access request classification systems **52-52n** is used for one of the content sites **108-108n**. For example, the

access request classification system 52 is for the content site 108 and the access request classification system 52 $n$  is for the content site 108 $n$ . The access request classification systems 52-52 $n$  are connected to their corresponding content sites 108-108 $n$  via the server application 53. Each access request classification system is used to classify the access requests for its corresponding content site such that preferential treatments may be provided for some of the access requests accessing that content site. This allows the server 50 to provide class-based services to its users. The class-based services server 50 allows multiple classes of users to share the same content site (i.e., the same URL address) and yet receive different treatments or performance. Class-based services is a mechanism for differentiating services given to individual classes. Thus, service performance can be priced based on performance or service agreements. A higher class with greater guarantee can be priced higher than a lower class that may offer less guarantee and more “best effort” services. Class-based services provide tiered performances to match tiered pricing. Each tier or class may have targets or expectations for performance. Each of the access request classification systems 52-52 $n$  performs substantially the same function. The structure of each of the access request classification systems 52-52 $n$  is shown in FIG. 4, which will be described in more detail below.

Col. 6, lines 13-39 of Bhatti et al.

Regarding dependent claim 59, the Examiner stated that “login attempts to a computer system inherently occur serially, rather than in parallel.” Office Action, page 5 (emphasis added). The Applicant respectfully traverses this assertion. First, it should be noted that the present claim is not limited to a single computer system. A login account may be accessed via multiple computer systems. For example, multiple clients may attempt to access a single account from multiple locations. Further, embodiments of the present invention are directed to preventing attacks against an account in parallel. As set forth above, embodiments of the present invention are directed to preventing unauthorized access to accounts. Some embodiments of the present invention “serialize login attempts made without a first-class login cookie 300 to control the rate at which such login attempts are processed” to prevent the

“launch [of] many attacks against an account in parallel.” Application, paragraph [0030] (emphasis added).

The Applicant asserts that the Examiner has not provided sufficient support for the inherency arguments made in the Examiner’s rejection of the subject matter set forth in amended claims 56 and 59. While the Applicant believes this is moot in view of the arguments set forth above, if the Examiner maintains a similar rejection in a future Office Action, the Applicant requests that the Examiner provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.

Regarding the Examiner’s rejection of claims 56-59, 61, and 62 in view of the Mosberger reference, the Applicant respectfully asserts that the Examiner’s rejections are vague and unexplained regarding the various claim features and, thus, the Applicant reminds the Examiner that:

When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

37 C.F.R. § 1.104(c)2; see also M.P.E.P. § 707.07.

In as much as the Examiner basically rejected claims 56-59, 61, and 62 in view of the Mosberger reference for the same reasons the Examiner rejected claims 56-59, 61 and 62 in view of the Bhatti reference, the Applicant asserts that they are allowable for the same reasons set forth above. The Mosberger reference merely appears to disclose cookies that identify to which class a particular user is subscribed (e.g., flat fee class or pay-per use class). *See Mosberger et al.*, col. 8, lines 17-18. Indeed, while the Mosberger reference appears to



disclose providing class-based services, it does not appear to disclose requiring a longer time delay for a second-class login cookie than for a first-class login cookie between an invalid login attempt and allowing a subsequent login attempt, as presently recited.

For the reasons set forth above, the Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 102 and a notice of allowance for independent claims 56 and 62 and the claims depending therefrom.

### **New Claims**

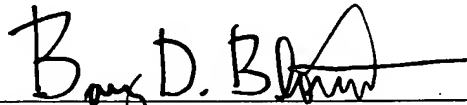
As set forth above, the Applicant added new claims 63 and 64. For the reasons discussed in detail above and other claim features, the Applicant believes these claims are patentable over the cited references and in condition for allowance. Therefore, the Applicant requests that the Examiner allow the new claims 63 and 64.

**Conclusion**

In view of the remarks set forth above, the Applicant respectfully requests allowance of claims 56 and 58-64. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: January 18, 2007

A handwritten signature in black ink, appearing to read "Barry D. Blount", written over a horizontal line.

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